

REMARKS

Pursuant to 37 CFR 1.111, Applicant submits this Reply to the Non-final Office Action mailed February 25, 2003. Applicant respectfully requests consideration of the amendments and remarks herein. Applicant respectfully submits that the amendments and remarks herein deem the above-identified application in condition for allowance.

In the Office Action mailed February 25, 2003, the Examiner objected to alleged informalities present in Claims 5, 6, 8, 10, 12, 16, 18, and 20. The Examiner has alleged that those claims depend directly or indirectly from independent cancelled claims. To correct the alleged informality, the Applicant has amended Claims 5 and 6 to depend directly from the independent Claims 1 or 25, which causes the remaining claims to depend indirectly from Claims 1 or 25. This should serve to obviate the Examiner's objection.

The Examiner has rejected Claim 6 under 35 U.S.C. 112, second paragraph, as allegedly being indefinite. Claim 6 formerly read as follows:

The tamper indicating closure of Claim 4 wherein said elevated areas extending from said tamper indicating ring are of a known vertical height, and said frangible elements are of a height greater than that of said known height of said elevated areas.

In the Office Action the Examiner inquires as to which of the frangible elements set forth in claims 1 and 25 are intended to have a height greater than that of the elevated areas. The Applicant respectfully responds to this inquiry by amending the claims to recite that "**at least one** of said frangible elements" is of a height greater than that of said known height of said elevated areas. Applicant respectfully submits that this amendment removes the Examiner's rejection with respect to Claim 6 as allegedly being indefinite.

The Examiner has rejected claims 1, 5/1, 6/1, 7/1, 22/1, 25, 5/25, 6/25, and 22/25 under 35 U.S.C. 103(a) as allegedly being unpatentable over Perchepied, U.S. Pat. No. 5,609,263

("Perchepied") in view of Sander et al., U.S. Pat. No. 5,497,481 ("Sander et al."). Specifically, the Examiner has rejected the two independent claims (Claims 1 and 25). The Examiner applied Perchepied against these claims in the Final Office Action dated September 20, 2002. In response to that Office Action, Claims 1 and 25 were amended to add a limitation for the frangible elements to be connected *from and between* the elevated areas on the tamper indicating ring that is connected by the frangible elements to the cap skirt. Now, in this most recent Office Action, the Examiner has applied Sander as teaching this feature.

A determination of prima facie obviousness is proper only when the references suggest or motivate one of ordinary skill in the art to modify or combine the reference teachings with a reasonable expectation of success. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must be apparent from the prior art, and not the applicant's disclosure. See In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991); MPEP 2143.03. In light of the foregoing, the Applicant respectfully submits that the Examiner has not established a prima facie case of obviousness.

Importantly, Sander discloses a **screw-on** disclosure which does not enable the claimed requirement for "said depending skirt having an internal thread configuration adapted for engaging an external thread configuration on the neck portion of said container by **snap-on** application during initial installation of said closure to the container neck". Therefore, Sander cannot be properly combined with Perchepied to form the basis of an obviousness rejection since Sander is fundamentally different from Perchepied in this respect of operation. Indeed, the teaching or suggestion to make the claimed combination and the reasonable expectation of success is not apparent from the cited prior art. Thus, the rejection of Claims 1, 5/1, 6/1, 7/1, 22/1, 25, 5/25, 6/25, and 22/25 under 35 U.S.C. 103(a) as allegedly being unpatentable over

Perchepied, U.S. Pat. No. 5,609,263 ("Perchepied") in view of Sander et al., U.S. Pat. No. 5,497,481 ("Sander et al.") is overcome, and withdrawal thereof is respectfully requested.

Next, the Examiner has rejected Claims 11/1, 11/25, 14/11/1, and 14/11/25 under 35 U.S.C. 103(a) as being unpatentable over Perchepied and Sander et al. in further view of Montgomery, U.S. Pat. No. 5,379,910 ("Montgomery"). The Examiner has also rejected Claims 17/1, 17/25, 19/1, and 19/25 as allegedly unpatentable over the prior art applied to Claims 1 and 25 in view of Repp et al., U.S. Pat. No. 5,593,055 ("Repp et al."). Applicant respectfully submits that neither Montgomery nor Repp et al. ameliorate the deficiencies of the Perchepied/Sander combination – those deficiencies are pointed out in the discussion above. Accordingly, those rejections are overcome, and withdrawal thereof is respectfully requested.

Next, the Examiner has rejected Claims 1, 5/1, 6/1, 7/1, 22/1, 25, 5/25, 6/25, and 22/25 under 35 U.S.C. 103(a) as allegedly being unpatentable over Kern, U.S. Pat. No. 4,448,319 ("Kern") in view of Perchepied and Sander. The Examiner applied Perchepied and Kern against these claims in the Final Office Action dated September 20, 2002. In response to that Office Action, Claims 1 and 25 were amended to add a limitation for the frangible elements to be connected *from and between* the elevated areas on the tamper indicating ring that is connected by the frangible elements to the cap skirt. Now, in this most recent Office Action, the Examiner has applied Sander as teaching this feature.

As stated above, Sander discloses a **screw-on** disclosure which does not enable the claimed requirement for "said depending skirt having an internal thread configuration adapted for engaging an external thread configuration on the neck portion of said container by **snap-on** application during initial installation of said closure to the container neck". Therefore, Sander cannot be properly combined with Perchepied and/or Kern to form the basis of an obviousness

rejection since Sander is fundamentally different from Perchepied and/or Kern in this respect of operation. Indeed, the teaching or suggestion to make the claimed combination and the reasonable expectation of success is not apparent from the cited prior art. Thus, the rejection of Claims 1, 5/1, 6/1, 7/1, 22/1, 25, 5/25, 6/25, and 22/25 under 35 U.S.C. 103(a) as allegedly being unpatentable over Kern, U.S. Pat. No. 4,448,319 ("Kern") in view of Perchepied and Sander overcome, and withdrawal thereof is respectfully requested.

Next, the Examiner has rejected claims 9/1 and 9/25 under 35 U.S.C. 103(a) as being allegedly unpatentable over the prior art as applied to Claims 1 or 25 above, and in further view of Csaszar, U.S. Pat. No. 4,343,408. And finally, the Examiner has rejected claims 11/1, 11/25, 14/11/1, and 14/11/25 under 35 U.S.C. 103(a) as being allegedly unpatentable over the prior art as applied to Claims 1, 11/1, and 11/25. These rejections depending upon the propriety of the Sander/Perchepied and/or Kern combination. As stated above, that combination is improper since there is no teaching or suggestion in any of those references to make the claimed combination, nor is there any reasonable expectation of success apparent from the cited prior art. Accordingly, the rejections are overcome, and withdrawal thereof is respectfully requested.

As a final remark, it should be noted that the Applicant's amendment to Claim 22 to recite an arcuate projection that comprises a "grooved" locking member obviates any rejection of Claim 22 based upon Kern, Perchepied, Sander, or combinations thereof because neither reference teaches such a limitation nor motivates the skilled artisan to arrive at such a limitation with any reasonable expectation of success.

Applicant respectfully submits that the patent application and the claims, as amended, therein are in a condition for allowance. Accordingly, reconsideration and allowance of the claims are respectfully requested.

Applicant would appreciate the courtesy of a telephone call should the Examiner have any questions or comments with respect to this response or the claim language for purposes of efficiently resolving same.

Respectfully submitted,

By



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